



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF N-USA, INC.

DATE: AUG. 9, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a solar window film business, seeks to employ the Beneficiary as an operations research analyst. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based "EB-2" immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center initially approved the petition, but subsequently revoked the approval on the ground that the record did not establish that the Beneficiary had five years of qualifying experience as an operations research analyst, as required by the labor certification. The Director also invalidated the labor certification based on a finding that the Petitioner and the Beneficiary had misrepresented the Beneficiary's employment experience. The Petitioner filed an appeal, which we dismissed. In our decision, dated October 4, 2017, we concurred with the Director's decision to revoke the approval of the petition and invalidate the labor certification on the grounds stated in his decision.

On November 3, 2017, the Beneficiary filed a motion to reopen and a motion to reconsider. We denied the motions on April 3, 2018, on the ground that the Beneficiary is not an affected party, as defined in the regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B), and therefore did not have legal standing to file a motion.

The case is now before us on a motion to reopen filed by the Petitioner on April 27, 2018. A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). For the reasons discussed below, we will deny the motion.

The Petitioner's Form I-290B, Notice of Appeal or Motion, states in Part 2, box 4, that the date of the adverse decision against which the motion to reopen was being filed was April 3, 2018. In our decision of that date we denied the Beneficiary's motions to reopen the proceeding and reconsider our previous decision of October 4, 2017, because the Beneficiary was not an affected party and thus not entitled to file a motion. While the Petitioner submits a brief and some documentation with its current motion, none of it addresses our ground for denial on April 3, 2018, which was the

Beneficiary's lack of legal standing to file a motion. Therefore, the Petitioner has not stated any new facts or submitted any evidence to support its motion to reopen the proceeding.

The Petitioner's brief in support of its motion to reopen addresses our substantive grounds for dismissing the appeal on October 4, 2017. It requests that we reopen the proceeding and approve the petition. In our decision dismissing the appeal, however, the Petitioner was specifically advised on the cover sheet that any motion to reconsider our decision, reopen the proceeding, or both, must be filed within 33 days of the date of our decision. As our dismissal of the appeal was dated October 4, 2017, the deadline for filing any motion to reopen and/or reconsider was November 6, 2017. *See also* 8 C.F.R. § 103.5(a)(1)(i). No such motion was filed by the Petitioner during the 33-day filing period, and the current motion to reopen was filed long after the 33-day deadline. Accordingly, even if the Petitioner had identified our decision of October 4, 2017, at Part 2, box 4, of the Form I-290B as the basis of its motion, the motion would have to be denied as late filed.¹ In accord with the foregoing analysis, we will deny the motion to reopen.

ORDER: The motion to reopen is denied.

Cite as *Matter of N-USA, Inc.*, ID# 1666159 (AAO Aug. 9, 2018)

¹ The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the failure to file a motion to reopen within the prescribed time period "may be excused in the discretion of [USCIS] where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." In this case, however, the Petitioner has neither claimed nor established that the late filing of its motion to reopen was reasonable or out of its control.